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Message Text

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PAGE 01 MADRID 02442 312011Z
ACTION EUR-12

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TO SECSTATE WASHDC IMMEDIATE 9602
INFO AMEMBASSY BONN
AMEMBASSY BRUSSELS
AMEMBASSY COPENHAGEN
AMEMBASSY THE HAGUE
AMEMBASSY LISBON
AMEMBASSY LONDON
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AMEMBASSY PARIS
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USMISSION EC BRUSSELS
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E.O.11652: N/A
TAGS: PINT, SP
SUBJECT: SUPREME COURT BALKS AT DECISION ON PCE LEGALIZATION
CONFUSION ENSUES

SUMMARY: THE MADRID PRESS REPORTS THAT THE SUPREME COURT'S FOURTH CHAMBER HAS JUDGED ITSELF INCOMPETENT TO RULE ON PCE LEGALIZATION, AND HAS MOVED TO RETURN THE CASE TO THE GOVT FOR A DECISION. NEITHER THE GOS NOR THE COURT HAS ISSUED A STATEMENT ON THE MATTER AND IT IS FAR FROM CLEAR WHERE IT STANDS AT THIS JUNCTURE.
END SUMMARY.

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1. ACCORDING TO PRESS REPORTS, WHICH CITE WELL PLACED SOURCES THE SUPREME COURT'S FOURTH CHAMBER YESTERDAY UNEXPECTEDLY REFUSED TO RULE DEFINITIVELY ON THE PCE'S LEGALIZATION APPLICATION, OPTING INSTEAD TO RETURN IT TO THE GOVT. NO TWO REPORTS COINCIDE COMPLETELY BEYOND THAT, BUT IT APPEARS THAT THE FOURTH CHAMBER WHICH DEALS WITH ADMINISTRATIVE MATTERS (CONTENCIOSO ADMINISTRATIVO)

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

DETERMINED THAT SINCE THE REFERRAL BY THE GOS IN THE FIRST
PLACE WAS BASED ON AN ASSUMPTION OF CRIMINAL ILLEGALITY ON THE
PART OF THE PCE, IT WAS INCOMPETENT TO RENDER JUDGEMENT
BY IMPLICATION, EITHER THE GOVT ITSELF OR THE CHAMBER OF
THE COURT WHICH HAS JURISDICTION OVER CRIMINAL QUESTIONS
(THE SECOND CHAMBER) WOULD HAVE TO RULE.

2. WELL PLUGGED IN INFORMACIONES COLUMNIST ABEL HERNANZED
WHILE ACKNOWLEDGING THAT THE SITUATION IS EXTREMELY CONFUSED
SPECULATES THIS AFTERNOON THAT THE CHAMBER ACTUALLY WAS
GOING TO RULE AGAINST PCE LEGALIZATION, AND THAT THE RETURN
OF THE CASE TO THE GOVT WAS AN ELEVENTH HOUR COMPROMISE
TO BUY TIME WORKED OUT BY THE GOS LEADERS, WHO DESIRED PCE
LEGALIZATION, AND THE COURT, HERNANDEZ CONTINUES THAT HE
SEES THREE AVENUES REMAINING TO THE GOS: SIMPLY GO AHEAD AND
LEGALIZE THE PCE BY INSCRIBING IT IN THE OFFICIAL REGISTER
"CORRECT" (UNSPECIFIED) THE DECREE LAW UNDER WHICH THE CASE
WAS REFERRED TO THE FOURTH CHAMBER BYPROMULGATING ANOTHER
DECREE LAW, OR CREATE ON AN URGENT BASIS A SPECIAL "COURT
OF CONSTITUTIONAL GUARANTEES" (TRIBUNAL DE GARANTIAS)
CONSTUTUCIONALES) TO RULE ON THIS AND SIMILAR CASES.

3. IN THE INTEREST OF WHATEVER CLARITY CAN BE MUSTERED
WE PROVIDE THE FOLLOWING SYNOPSIS OF THE COURT'S ZIGS AND
ZAGS ON THE LEGALIZATION QUESTION. WHEN THE GOBT MOVED
TO REFER CERTAIN CONTROVERSIAL LEGALIZATION CASES TO THE
SUPREME COURT (WE UNDERSTAND THAT A TOTAL OF 27 HAVE THUS
FAR BEEN REFERRED) IT DID SO, UNDER THE PROVISIONS OF THE
NEW DECREE LAW ON POLITICAL ASSOCIATION, TO THE TRIBUNALS
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FOURTH CHAMBER.

4. AFTER A FURRY OF EARLY RUMORS THAT THE COURT WOULD
DECLARE ITSELF INCOMPETENT AND EITHER KICK THE CASES BACK
TO THE INTERIOR MINISTRY OR UPSTAIRS TO THE KING HIMSELF
FOR A DETERMINATION, THE FOURTH CHAMBER WENT AHEAD
WITH IT CONSIDERATION OF THE CASES. BUT THIS IS NOT WITHOUT
AUDIBICAL MATTERS DUMPED IN ITS LAP AND OVER THE ADMINISTRATIVE
CHAMBER'S HAVING TO RULE ON WHAT WERE ESSENTIALLY CRIMINAL
CASES.

5. HEARINGS ON THE CASES THEN APPEARED TO MOVE AHEAD IN A
BUSINESSLIKE MANNER, WITHE ATTENTION CONCENTRATED OF COURSE
ON THE CASE OF THE PCE. ALTHOUGH THE FOURTH CHAMBER HAS
KEP ITS DELIBERATIONS NEARLY AIR TIGHT, THE LAWYERS
REFUSAL TO PRESENT ANY STRONG ARGUMENT AGAINST PCE
LEGALIZATION LEAKED TO THE PRESS AND CONTRIUBTED HKEAVILY
T WID SPREAD IMPRESSION THAT THE PCE, IF NOT THE MANY
FAR LEFT PARITES IN QUESTION WOULD LEGALIZAED

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

6. AS THE DEADLINE FOR A DECISION APPROACHED HOWEVER PRESSURE WITH IN THE COURT OBVIOUSLY MOUNTED. WHEN THE LONG ILL PRESIDENT OF THE FOURTH CHAMBER PASSED AWAY LAST WEEK THE GOVT'S NOMINATION OF A SUCCESSOR, LIBERAL SUPREME COURT JUSTICE BECERRIL. THEN BEACUSE THE LIGHTENING ROD FOR THE COURT'S GENERAL UNHAPPINESS OVER BEING STICK WITH THE LAGALIZATION CASES AT ALL. AND FOR MORE SPECIFIC DIFFERENCES OF OPINION OVER THE PRO AND CONS OF THE PCE CASE IN PARTICULAR.

7. THE COURT THEN TOOK THE UNPRECENDED STEP OF VOTING 23 TO 18 AGAINST THE NAMING OF BECERRI WITH THIS BEING INTERPRETED IN PART AS A FLECTIION OF THE INTERNAL DIVISIONS ON THE PCE QUESTION AND OF CONSERVATIVE JUSTICS" CONVENTION THAT THE RELATIVELY LIBERAL BECERRIL WOULD TIP THE BALANCE IN THE FOURTH CHAMBER IN FAVOR OF PCE LEGALIZATION. (THE CHAMBER LIMITED OFFICIAL USE

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PAGE 04 MADRID 02442 312011Z

WHICH CURRENTLY CONSISTS OF NONE MEMEBERS, REPORTEDY HAS DIVIDED ITSELF INTO TWO FORUR JUSTICS SECTIONS TO SPLIT THE CASE LOAD. THE CHAMBER PRESIDENT WOULD CHAIR BOTH SECTION AND CAST THE FIFTHVOTE IN EACH).

8. DEPSITE THE BRUHANA OVER THE BECERRIL NOMINATION AND A RASH OF ILLNESSES AMONG THEJUSTICES, SOME OF WHICH MAY HAVE BEEN A "POLTICAL" NATURE, THE FOURTH CHAMBER YESTERDAY ASSEMBELED A QUORUM OF FOUR JUSTICES AND AN ACTING PRESIDENT TO "RULE". A QUORMOF FOUR JUSTICES AND AN ACTING PRESIDENT TO "RULE", BEHIND CLOSED DOORS. ON THE APPLICATION.

9. COMMENT: WITH ALL THIS, WE EMPHASIZED, AS HERNANDEZ CONCEDED IN HIS COLUMN TODAY. THAT IT IS CONCEIVABLE THAT THE FOURTH CHAMBER HAS NOT IN FACT REACHED A FINAL DECISION ON THE PCE CASE AT ALL. WHATEVER THE FACTS OF THE MATTER, THE CURRENT CONFUSED HAS SHAKEN WHAT WAS BEEN FAIRLY WIDESPREAD CONFIDENCE THAT THE PCE WAS TO BE LEGALIZED, IN FAIRLY ORDER.EATON

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